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AUG 25 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

FRANCES SEGHERS
VICE PRESIDENT
FEDERAL AFFAIRS

August 25, 1993

William Caton
Acting Secretary
Federal Communications Commission
Room 222
1919 M St. NW
Washington, D.C. 20554

RE: Implementation of Sections of
the Cable Television
Consumer Protection and
Competition Act of 1992
Rate Regulation
MM Docket No. 93-215

Dear Mr. Caton:

Attached please find an original and 9 copies of the comments of the Motion Picture Association of America (MPAA) in the above-referenced docket. These comments are in response to the FCC's Notice of Proposed Rulemaking regarding rate regulation of cable television.

If you have any questions, please contact me.

Sincerely,

Frances Seghers

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the matter of

Implementation of Sections of the
Cable Television Consumer
Protection and Competition Act
of 1992

MM Docket No. 93-215

Rate Regulation

TO: The Commission

COMMENTS OF THE MOTION PICTURE ASSOCIATION OF AMERICA, INC.

The Motion Picture Association of America, Inc. ("MPAA") hereby respectfully submits its comments in response to the Notice of Proposed Rulemaking ("NPRM")¹ in the above-referenced proceeding.

In the instant proceeding, the Commission proposes regulations to govern cost-of-service showings submitted by cable operators seeking to justify rates above levels determined under the "benchmark" and "price cap" regulatory scheme adopted earlier this year. As providers of cable programming services, the MPAA member companies are concerned that these new regulations not inadvertently harm the ability of programmers to invest in programming desired by consumers and to recoup the market value of their products.

¹ FCC 93-353 (rel. July 16, 1993).

The Commission recognized these concerns in establishing its benchmark" and "price cap" rate regulation scheme for basic cable. In that proceeding, the Commission concluded that programming costs increases should be treated as external costs, and that, on a going-forward basis, cable operators should be allowed to pass through to subscribers increases in programming costs that exceed inflation.²

In the instant proceeding, the Commission tentatively concludes that programming expenses are among the "plant non-specific costs" that "cable operators are entitled to recover in rates for regulated cable service."³

In implementing this provision, the Commission should ensure that the cable operators is able to recover in their entirety the fees paid to cable programmers, plus a reasonable rate of return. These costs should not be subject to offsets of any kind. To do otherwise would directly restrict the ability of cable programmers to obtain the market value of their products. Moreover, it would create a strong disincentive to cable operators to add new

² Report and Order in MM Docket No. 92-266 (FCC 93-177, rel. May 3, 1993), at para. 251 ff. The Commission did limit the pass-through of cable MSOs, capping them at the lesser of the incremental percentage increase in such costs or the GNP-PI. This limitation is current under reconsideration.

Also under reconsideration is a request that the Commission permit a cable operator to pass through the cost (including a reasonable rate of return) of commercial-free, premium services, to the extent the cost exceeds the system's marginal per-channel benchmark -- at the time a new service is added or upon the effective date (or as soon thereafter consistent with the rate freeze) for services already carried upon a program tier.

³ NPRM at para. 24.

programming services, particularly high cost, quality services. This result would, of course, disserve the viewing public.

The legislative history of the 1992 Cable Act nowhere suggests that price of cable programming negotiated between cable operator and cable programmer needs to be regulated in the public interest. In adopting its cost-of-service rules, the Commission should avoid any provisions that inadvertently function to regulate these transactions.

Respectfully submitted,

MOTION PICTURE ASSOCIATION OF
AMERICA, INC.

By: *Frances Seghers*
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DATED: August 25, 1993